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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA ) 15CR151  
 )  
vs.  
MICHAEL O'NEILL, ) Rochester, New York  
 ) November 12, 2015  
Defendant. 2:00 p.m.  
- - - - - X

**MOTION**

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE ELIZABETH A. WOLFORD  
UNITED STATES DISTRICT JUDGE

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Appearing on behalf of the Defendant  
  
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USA V. M. O'NEILL

P R O C E E D I N G S

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THE CLERK: United States vs. Michael O'Neill,  
this is case No. 15CR151EAW.

MR. PIMENTEL: Good morning. Frank Pimentel for  
the United States.

MR. LATONA: Judge, Joe LaTona on behalf of Mr.  
O'Neill, who has waived his right to be present at these  
proceedings.

THE COURT: Yes. Your client waived his right to  
be present?

MR. LATONA: Yes, he has, your Honor. I met with  
him at the Chautauqua County Jail on Tuesday. Actually I had a  
jurat prepared, I'm not a notary because I don't want to get  
conflicted off of cases and what not, they didn't have a notary  
there, but --

THE COURT: You are not a notary?

MR. LATONA: No, I let it lapse because that could  
be a conflict if there is an issue if you have to testify, and  
then see you later lawyer. But, Judge, he did sign a document,  
which I did see him sign it, it is just not a Jurat.

THE COURT: So the record should reflect that Mr.

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2 LaTona has just handed to me a waiver from Mr. O'Neill  
3 indicating that he knowingly and willingly waives his right to  
4 be present. And you are stating on the record that you  
5 witnessed your client sign this?

6 MR. LATONA: Absolutely, and went through it  
7 carefully with him, your Honor.

8 THE COURT: Very good. So we will waive his  
9 presence for this appearance today. We are here today, Mr.  
10 LaTona, because you filed a motion to appeal from Judge Scott's  
11 detention order entered August 5, 2015. Let me just clarify  
12 something as we begin, and that is I know in your recitation of  
13 the facts, you discussed the more recent appearance in front of  
14 Judge Scott to make sure that your client obtained the fitting  
15 for the prosthetic device that he needs. Is that still an  
16 issue or has that been resolved?

17 MR. LATONA: Judge, yeah, I think it has been  
18 resolved. That, as a result of my last motion, Ms. Smith of  
19 the Marshal Service spoke to the individuals in D.C., who,  
20 basically, had reversed their earlier decision not to pay for  
21 it. They are going to pay for it, and it has been resolved,  
22 and I thanked the local people here for staying on top of  
23 everything. As best I know, everything is fine. I believe if  
24 not this week, maybe next week or at some point he is going to  
25 be fitted with the device. When I saw him the other day, he is

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2 in a wheelchair, there is a plastic covering to his leg stump,  
3 that, as I understand it, is standard procedure for the interim  
4 until he will be fitted for and hopefully receive the  
5 prosthetic device.

6 THE COURT: Okay. So, the motion that you filed  
7 in regards to Judge Scott's ruling on the government's right on  
8 standing to make a detention motion.

9 MR. LATONA: Yeah. Judge, if I can, and I went  
10 through the law on it, and I think it is Title 18 Section  
11 3145(b) that talks about the review of a detention order, so  
12 it's technically not an appeal. I don't think we get to the  
13 appeal process until your Honor rules one way or the other. So  
14 that is what it is, but I think, yes, and it's devoted, at this  
15 point, to the detention portion of it, Judge. And I guess if  
16 you want to hear my argument on it.

17 THE COURT: Yes, go ahead.

18 MR. LATONA: I think the one thing, and I don't  
19 believe we will have any opposition, is the statute and the  
20 case law indicates that your Honor has to provide a *de novo*  
21 review. And Judge Skretny in the *Goba* case, the Lackawanna Six  
22 case, 240 F. Supp. 2d at 245 indicated that "a Magistrate  
23 Judge's determination is not entitled to any deference." In  
24 that one, I was involved in the Lackawanna six case and we had  
25 an extensive detention hearing before Judge Schroeder. And it

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2 was a lot more than a proffer concerning the information that  
3 the Government brought forth. They were able to bring in the  
4 travel, the tickets to Pakistan, certain of the information  
5 putting them in Afghanistan, and things of that kind. And I  
6 submit, Judge, and, again, we can come back, it may well be,  
7 and I am sure the Government would not argue the point that  
8 should you feel in your discretion to have some further  
9 submissions of fact of law or maybe even a hearing, but our  
10 position has consistently been that under prevailing Second  
11 Circuit law, and U.S. Supreme Court law, and even the Federal  
12 Rules of Criminal Procedure that they all militate in favor of  
13 release in this particular case.

14 Judge, when we go back to the original complaint  
15 in this case, there was an affidavit from an ATF agent, there  
16 was an explosion, people were summoned to the scene, it was  
17 apparently advisable that other law enforcement agencies be  
18 called in. And where we started is that this agent swore in  
19 his affidavit for the complaint that he saw what appeared to be  
20 and IED, the improvised explosive device. Now, Judge, since  
21 1971, in the *Posnjak* case, the Second Circuit vacated that -- I  
22 think it was a plea -- or was it a trial? Oh, that's right, it  
23 was Judge Curtain. But basically they also addressed the  
24 legislative history behind this particular statute. And  
25 basically what they said is this statute and the definition of

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2 a "destructive device" only means those items which have no  
3 legitimate use. In fact, and that is right, that was the case  
4 where a government expert came in, and when he was being  
5 examined he said, "if you are going to use it to blow up a tree  
6 stump, that's not a destructive device because that is a  
7 legitimate use."

8 THE COURT: But in that case, isn't it correct  
9 that the commercial dynamite that the defendant was trying to  
10 set off was not -- in the form that it was -- was not capable  
11 of being used for a destructive purpose. In other words,  
12 additional modifications would have needed to be made to the  
13 dynamite.

14 MR. LATONA: I don't know that. I mean, you can  
15 throw a stick of dynamite and if it is anywhere near a fire or  
16 whatever, it could explode. And if you start off with a  
17 Molotov cocktail and want to finish the job, so there you go,  
18 you could throw it and that would be that.

19 THE COURT: My reading of the cas subsequent to  
20 that, the *United States vs. Bubar*, 567 F. 2d 192, Second  
21 Circuit case from 1977, seems to distinguish the *Posnjak* case,  
22 among other reasons, on that ground. In other words, you are  
23 right, a person cannot be charged with a destructive device  
24 with just a component of a destructive device. If your client,  
25 in this instance, was being charged with these crimes just

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2 because he had a box of nails, that isn't sufficient. My  
3 understanding of the Government's position is that these items  
4 that were found, I guess a total of seven alleged destructive  
5 devices, including one that had at least nails and shrapnel in  
6 it, was an entire -- you know, it was ready to be lit. If you  
7 look at Government's Exhibit 3, it has a fuse on the end of it.

8 MR. LATONA: That's their position, Judge. And I  
9 think -- I don't think any of the Second Circuit case law after  
10 *Posnjak* ever attempted to even distinguish their discussion of  
11 the legislative history, which included their express  
12 recognition that, in essence, to be a device or a similar  
13 device under the destructive device definition, it's got to be  
14 military ordinance. Merely because it can explode is not  
15 enough. And also, Judge, we have the statutory exclusion as,  
16 well, whereas if an item, albeit if all of the components are  
17 there, but if it is designed or redesigned not intending to be  
18 a weapon, then it doesn't fall within the statute. And, Judge  
19 one of the things that -- and it's not a big secret to the  
20 Government -- I brought *Posnjak* to the attention of the  
21 Magistrate Judge --

22 THE COURT: Just so that you are all aware, I have  
23 listened to the audio transcript of the first appearance in  
24 front of Judge Scott, I think it was July 30th, and that issue  
25 was raised. And I also read the transcript in the subsequent

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2 appearance in front of Judge Scott where this issue was  
3 addressed. So, I am familiar with it.

4 MR. LATONA: Okay, Judge. Well, here is the  
5 thing, one would think, you have access to the ATF and probably  
6 every other law enforcement in the country, and yet what we  
7 don't have is some affidavit from an expert that would address  
8 what these issues were in *Posnjak*: A, it would have no  
9 legitimate use; and B --

10 THE COURT: But according to that line of  
11 reasoning, Mr. LaTona, then in any kind of detention, if I  
12 understand what your argument is, any kind of detention hearing  
13 that the Government is relying on this statute to support  
14 detention, you would need -- and you have some kind of homemade  
15 device, you would need some kind of expert testimony to support  
16 the notion that this is in fact a destructive device?

17 MR. LATONA: Absolutely not, no, I'm not saying  
18 that at all, Judge. I am not saying that. For example,  
19 certain things, such as Molotov cocktails, which were the items  
20 in the cases cited by the government, we know what that is, you  
21 don't need an expert. A Molotov cocktail is either to blow  
22 someone or something up, this is not what we have here. And,  
23 quite frankly, Judge, you have it from the standpoint of  
24 *Posnjak* and the statutory exclusion. Not even an affidavit  
25 that says there is no way that this design could ever be



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2 construed as having a legitimate purpose. Why don't we have  
3 that, Judge? And I'm not saying in every case, I'm saying in  
4 this case, with all due respect, that the issue of the  
5 statutory exclusion in *Posnjak* should have been addressed. And  
6 I'm asking your Honor, with all due respect, and again with  
7 this *de novo* review to open it up with a hearing, the extent of  
8 which would be up to you, if you accept affidavits, as long as  
9 we get the opportunity to review them, consider them and  
10 respond to them, you may want to have an evidentiary hearing.  
11 It's up to you, Judge, because what I submit, respectfully, is  
12 that Magistrate Judge Scott had no factual or legal predicate  
13 for him concluding that there is no non-malevolent use of this  
14 item. There is no basis in the record, absolutely none.

15 THE COURT: But you would agree there is a basis  
16 in the record to conclude, based on the preponderance of the  
17 evidence, which I think it would just be preponderance that the  
18 Government would have to show it was a destructive device to  
19 address that issue, but you would agree there is evidence that  
20 at the scene was items that were homemade items that were  
21 explosive devices that contained nails?

22 MR. LATONA: Well, sure, and even Magistrate Scott  
23 said, "well, what would be the legitimate use," get rid of a  
24 tree stump. What do you use on a tree - metal. And it's a  
25 cleaner cut when you resolve it at the stump level.

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2 THE COURT: With the nails that are in there?

3 MR. LATONA: Sure.

4 THE COURT: There are a number of cases, I realize  
5 neither party has cited, I can't think of the cites for them,  
6 that hold that under circumstances like this where you have a  
7 destructive device that's homemade or was comprised of shrapnel  
8 or what have you, that it clearly meets the definition of  
9 destructive device under the statute. I will give you some  
10 cites right now. *United States vs. Waits*, 581 F. Appx. 432,  
11 Fifth Circuit 2014, The court said, "regardless of the  
12 co-defendant's stated intent to use the device to blow up  
13 stumps, its design demonstrates that it was an explosive pipe  
14 capable of releasing shrapnel, which meets the definition of  
15 destructive device." *United States vs. Hammond*, 371 F. 3d 776,  
16 it's an Eleventh Circuit case from 2004. The court said there,  
17 "even a cardboard tube explosive device, however, could be  
18 designed to include tacks, nails or other small metal pieces.  
19 A device so designed would be explosive "plus" and would appear  
20 to support a jury's finding that the device was designed as a  
21 weapon." And then *United States vs. Johnson*, 152 F. 3d 618,  
22 Seventh Circuit case from 1998, "there appears to be no  
23 question, the devices in question had all the ingredients to  
24 make a destructive device, including shrapnel." There is also  
25 a Northern District of Iowa case, it's unreported, 2013 Westlaw

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2 4647538, "the destructive device consisted of a CO2 cartridge  
3 containing powder with a fuse entrapment attached to it and  
4 shrapnel consisted of nails and bbs."

5 If I am understanding your argument, Mr. LaTona,  
6 your point is, even if you have a device that clearly is  
7 explosive in nature, is homemade and has shrapnel in it, that  
8 the Government still has to prove that there is no legitimate  
9 use for this device.

10 MR. LATONA: That's the *Posnjak* case. That's what  
11 *Posnjak* said. That is the law in the Circuit and has been the  
12 law.

13 THE COURT: I'm not reading *Posnjak* the same way.

14 MR. LATONA: Oh.

15 THE COURT: *Posnjak* was dealing with, first of  
16 all, a device that wasn't a destructive device, it was a  
17 component of a destructive device.

18 MR. LATONA: But it discussed the statute, it  
19 discussed the legislative history and concluded that Congress  
20 only attempted to prohibit items that had no legitimate use.  
21 And they even addressed the issue of an explosive device, and  
22 what they said there was it had to -- it had to be the essence  
23 of military ordinance. I mean, when we look to the Supreme  
24 Court in the *Bond* decision that I cited, when they talk about  
25 -- and that was the chemical weapon case where the Fed's

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2 prosecuted that lady for using those chemicals, here is what  
3 the Supreme Court said in *Bond*: "More to the point, the use of  
4 something as a weapon, typically connotes an instrument of  
5 offensive or defensive combat." Webster's 3rd, and then they  
6 cite that, or, "an instrument of attack or a defense in combat  
7 as a gun, missal or sword." That is the Supreme Court of the  
8 United States.

9 THE COURT: But your argument, taken to its  
10 logical conclusion, would be that any time a defendant proffers  
11 any reason that he possess an item that is of a destructive  
12 nature, whether it is to remove a tree stump or whatever, that  
13 then the Government somehow has a burden to come forward and  
14 prove that in fact he could not be using this?

15 MR. LATONA: That's exactly what the law is in the  
16 Second Circuit, Judge.

17 THE COURT: And you are concluding that that is  
18 the law in the Second Circuit based on *Posnjak*?

19 MR. LATONA: On *Posnjak* and the statute. We have  
20 to remember one thing. There is a statutory exclusion, and  
21 inviting your Honor's attention to 26 U.S.C. Section 5845(f)  
22 which defines destructive device. Here is what Congress put in  
23 the statute. "The term destructive device shall not include  
24 any device which is not designed or redesigned for use as a  
25 weapon. Now, when we have a statutory exclusion, if we are at

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2 a trial, they have to disprove it beyond a reasonable doubt. I  
3 think for purposes of detention, and for purposes of an  
4 appropriate indictment, they have to offer some proof in that  
5 area, because, again, getting back to *Posnjak* and the clear  
6 language of the statute, if it's not designed as a weapon, it's  
7 not prohibited. That is what the Circuit said in *Posnjak*, that  
8 is what Congress said in the statute.

9 THE COURT: Mr. Pimentel, what do you say to Mr.  
10 LaTona's argument that is the burden that the Government has?

11 MR. PIMENTEL: Judge, the Government's burden at  
12 this point is not proof beyond a reasonable doubt. We have  
13 already indicted the case. The grand jury saw sufficient  
14 evidence to return an indictment and they did so. The  
15 indictment is presumed to be regular. That is sufficient under  
16 the detention statute for the Court to proceed and determine  
17 detention.

18 THE COURT: But separate and apart from the  
19 reasonable doubt standard, what about Mr. LaTona's argument  
20 that on this detention issue, the Government has an affirmative  
21 obligation to essentially rebut the defendant's proffered  
22 reason for why he had this explosive device.

23 MR. PIMENTEL: He has no authority for that. The  
24 only case he cites for that proposition is a case involving  
25 improper restriction of cross examination at trial. That is

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2 far down the road from where we are right now. He simply has  
3 no authority for that proposition.

4 THE COURT: Is the Government proffering -- I  
5 mean, I have looked at the criminal complaint and I have in  
6 front of me the exhibits that were used in front of Judge  
7 Scott, is the Government contending that all of these items are  
8 able to be exploded. I mean, particularly, the one I am  
9 looking at is Government Exhibit 3, which is powder with nails.

10 MR. PIMENTEL: I mean, at this point, we have only  
11 indicted the one.

12 THE COURT: So when you say you have only indicted  
13 the one, what do you mean?

14 MR. PIMENTEL: The one, I think it is Government's  
15 Exhibit 3.

16 THE COURT: The one that says "powder with nails"?

17 MR. PIMENTEL: Right.

18 THE COURT: And, in particular, the one that I am  
19 looking at is indicted that in fact it was a destructive  
20 device.

21 MR. PIMENTEL: A destructive device.

22 MR. LATONA: I'm sorry.

23 THE COURT: Go ahead.

24 MR. LATONA: Judge, I think he is wrong, I cited  
25 more than one case. *Reindeau* was a case under cross

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2 examination, but under *Posnjak* and the statutory exclusion,  
3 that is what I am relying on. Now, Judge, with all due respect  
4 to the Government, and I think my application for your Honor, I  
5 didn't ask for disclosure of the grand jury minutes to me, I  
6 asked it for your Honor. And he cited a section that I didn't  
7 rely on because clearly you have the power, without disclosing  
8 it to the defense, to examine the grand jury minutes in  
9 connection --

10 THE COURT: Do you have any authority for the  
11 notion that you would go and look at the grand jury minutes in  
12 connection with the detention hearing?

13 MR. LATONA: Sure. There are a number of  
14 dismissals in this district by district judges where that  
15 exactly happened, Judge. And I am inviting your attention,  
16 Judge, *United States vs. Acquest*, Judge Skretny's decision, 932  
17 F. Supp. 2d 453, in which there was an examination of the  
18 presentation to the grand jury and the indictment was dismissed  
19 for misconduct, certain evidence was brought in that shouldn't  
20 have been brought in. Judge Arcara's --

21 THE COURT: But that didn't have anything to do  
22 with a detention hearing, just based on what you just said.

23 MR. LATONA: Well, that had to do with the  
24 validity of an indictment, and here is my position --

25 THE COURT: So I guess that is where I am

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2 confused, Mr. LaTona, because I understand you filed a motion,  
3 I know it's not an appeal, but you filed a motion seeking me to  
4 reverse Judge Scott's detention order, and then in that motion  
5 you have an argument about the disclosure of grand jury  
6 minutes, but I am not reading this as a motion to dismiss the  
7 indictment based on insufficient evidence presented or evidence  
8 presented to the grand jury or insufficient instructions or  
9 lack of instructions.

10 MR. LATONA: We're not there yet. That motion is  
11 coming.

12 THE COURT: But see, that is where --

13 MR. LATONA: But --

14 THE COURT: Let me finish.

15 MR. LATONA: Fine.

16 THE COURT: That's where I am confused because all  
17 of a sudden in this motion that has been filed with respect to  
18 a detention issue, you have argument in there about disclosure  
19 of grand jury minutes. And it's not clear to me what authority  
20 you are relying on that the Court, if the Government has  
21 proffered evidence in support of detention, would nonetheless  
22 go behind the indictment and view the grand jury minutes to  
23 determine whether or not there should be detention.

24 MR. LATONA: Well, no, no, whether there is a  
25 valid charge. As he just argued --



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2 THE COURT: So, but that is my point. Let me  
3 finish. If you are questioning whether or not there is a valid  
4 charge, then why aren't you moving to dismiss the indictment or  
5 seeking by formal motion to disclose the grand jury minutes?

6 MR. LATONA: Well, I think it relates to detention  
7 insofar that if we don't have a valid indictment, then what is  
8 the basis to even detain my client? And we have had judges  
9 here look beyond it, because here is my position --

10 THE COURT: You think judges here look beyond it  
11 even in connection with a detention issue?

12 MR. LATONA: Not detention, but as to the validity  
13 of an indictment. When they said there is a presumption, well  
14 we can get around it, and quite frankly, my view is this,  
15 Judge, if they didn't present evidence that this item could be  
16 used for a legitimate use, if they didn't instruct the grand  
17 jury on the *Staples* decision of the Supreme Court, if they  
18 didn't fashion instructions under *Posnjak* and the statutory  
19 exclusion, the grand jury was not allowed to properly do its  
20 independent duty, which has been found by other judges in here,  
21 in Buffalo, albeit not on detention issues but other issues  
22 regarding presentment to the grand jury. And the authority for  
23 it is, look it, Rule 6 says you are empowered to do it on any  
24 judicial proceeding. You are not limited --

25 THE COURT: Even if I denied your motion, though,

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2 at this point, that that would somehow act as law of the case  
3 then and preclude you from raising this issue further down  
4 about the disclosure of the grand jury minutes.

5 MR. LATONA: No, because I would move under a  
6 different section.

7 THE COURT: But if I decided, based on the face of  
8 the indictment, that it is sufficient and rejected your  
9 argument in that regard, you don't think that that would  
10 jeopardize your ability to make this argument later on in the  
11 case?

12 MR. LATONA: Well, I hope not. I mean, I guess  
13 two things could happen. I would hope the Court would keep an  
14 open mind, and, of course, not saying it would happen, but  
15 whatever you do here is reviewable in New York City by the  
16 Second Circuit, so, I mean, I just don't know. But when they  
17 say I have a valid indictment, it's presumed to be all fine and  
18 good, well, that opens up an opportunity for me to say, well, I  
19 think the Court should look at it to see if the instructions to  
20 this jury comported with Supreme Court law, Second Circuit law,  
21 and the statute itself.

22 THE COURT: Mr. Pimentel, does the government  
23 agree with Mr. LaTona that at some point the government has to  
24 prove that there was no legitimate use for this device as part  
25 of its affirmative obligation in proving this charge?

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2 MR. PIMENTEL: Well, yes, that's in the statute,  
3 the legitimate use. But that is an issue for the jury to  
4 ultimately decide.

5 THE COURT: And they could find that based on  
6 circumstantial evidence and evidence found at the scene and  
7 other paraphernalia and so forth?

8 MR. PIMENTEL: Right. And Judge Scott considered  
9 the evidence as it was presented to him, decided in the first  
10 instance, yeah, looking at this, I don't see any legitimate  
11 use, therefore the charge, I think, is valid to go forward and  
12 sufficient to detain on.

13 THE COURT: Would the Government need expert  
14 evidence to prove that there was no legitimate reason?

15 MR. PIMENTEL: Judge, I don't know about that. I  
16 don't know if I can admit to that at this point. Perhaps, But  
17 I just don't know the answer to that, that at trial, we would  
18 need expert testimony.

19 THE COURT: Okay.

20 MR. LATONA: Lastly, Judge, I did bring the *Bond*,  
21 Supreme Court decision in *Bond* to your Honor's attention about  
22 the chemical weapons and what not. And the way I look at it,  
23 particularly in light of New York State having adopted its own  
24 statutes, that we have a federalism issue here in terms of  
25 whether this case should even be in federal court.

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2 THE COURT: I guess, yeah, explain to me your  
3 argument about that.

4 MR. LATONA: Judge, yeah, I think it was pretty  
5 ground breaking in the *Bond* decision. Basically there is a  
6 treaty that arose, I think after the Iran/Iraq war prohibiting  
7 the use of chemical warfare. We signed the treaty. A statute  
8 was passed based on that treaty. There was a women who got  
9 upset at her husband's lover and she planted some of these  
10 chemicals in and around the post office box and things like  
11 that. Prosecuted in state court. The Feds indict under the  
12 section 229. The issue the defendant constantly raised was  
13 this is an issue of the state's police power and not a federal  
14 matter. It went all the way to the Supreme Court, which said,  
15 "that's correct." Under concepts of federalism and the Tenth  
16 Amendment, which basically says, any right not specifically  
17 surrendered to the Federal Government by the states, is  
18 reserved under the states.

19 Now, I know he cited the *Dodge* case that raised  
20 the constitutionally challenge to the statute, but it's totally  
21 off the mark. Even in *Bond*, the Supreme Court did not  
22 invalidate the statute, basically what it said is this: Before  
23 we will authorize the federal government to intrude into a  
24 matter within the state police power, there would have to be a  
25 specific declaration by Congress that this is what they

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2 intended to do. I guess the perfect example of this, Judge,  
3 would be we in New York have a statute on explosives, but let's  
4 say Utah doesn't, where they haven't, as a matter of police  
5 policy, set up this type of situation. So you can have a case  
6 where maybe this statute is fine there but not fine here. And  
7 certainly wasn't in the *Bond* decision and so there is a concept  
8 of federalism, I think that should be considered.

9 THE COURT: But that, again, sounds to me as  
10 though an argument that you would make support of a motion,  
11 perhaps, to dismiss an indictment.

12 MR. LATONA: Certainly.

13 THE COURT: You are raising it, though, at the  
14 detention level, and you are expecting that I would resolve  
15 that issue before determining whether or not the government  
16 would be able to detain the defendant.

17 MR. LATONA: By raising it, I hope you look at it.  
18 Whether you predicate your decision on it, is up to you.

19 THE COURT: Okay. Anything else, Mr. LaTona?

20 MR. LATONA: That's it.

21 THE COURT: Mr. Pimentel?

22 MR. PIMENTEL: No, your Honor.

23 THE COURT: All right. Anything, Officer  
24 Middlebrooks, from Probation?

25 PROBATION: No, Judge.

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2 THE COURT: Okay. I will reserve and issue a  
3 decision hopefully very soon.

4 MR. LATONA: Thanks, Judge.

5 THE COURT: Thank you. Everybody have a nice day.

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7 CERTIFICATE OF REPORTER

8

9 I certify that the foregoing is a correct transcript of the  
10 record of proceedings in the above-entitled matter.

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12 S/ Karen J. Bush, RPR

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Official Court Reporter

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